

## **.au Dispute Resolution Policy – Administrative Panel Decision**

**twunsw.com.au, twunsw.net.au, transportworkersunion.com.au, wayneforno.com.au, tonysheldon.com.au ("the Domain Names")**

**Reference: 3348**

### **Parties**

1. The Complainants in this dispute are the Transport Workers Union of NSW ABN 77 710 588 395 ("the First Complainant") and the Transport Workers Union of Australia Federal Branch ABN 24 302 560 296 ("the Second Complainant").
2. The Respondent is the National Union of Workers NSW Branch ABN 89572801634.
3. The Registrar is as follows

<b>Domain name</b>	<b>Registrar</b>
twunsw.com.au	Melbourne IT
twunsw.net.au	Distribute.IT
transportworkersunion.com.au	Nil
wayneforno.com.au	Melbourne IT
tonysheldon.com.au	Melbourne IT

4. The Provider is the Institute of Arbitrators & Mediators Australia of Level 1, 190 Queen Street, MELBOURNE VIC 3000.
5. The Sole Panellist is Steve White of Suite 604, 109 Pitt Street Sydney NSW 2000.

### **Procedural History**

6. On 19 August 2009 the Complainant requested a decision in accordance with the .au Dispute Policy and the .au DRP rules.
7. On the Respondent was notified of the complaint on 17 September 2009.
8. The Respondent did not file and material in response.

### **Preliminary Matters**

9. The Registrant of the Domain Names as disclosed by a whois search is as follows:

twunsw.com.au	Transport Workers Union of New South Wales
twunsw.net.au	National Union of Workers NSW Branch
transportworkersunion.com.au	Not registered
wayneforno.com.au	Transport Workers Union of New South Wales
tonysheldon.com.au	Transport Workers Union of Australia Federal Council

10. The Respondent is not the registrant of the domain names:
  - (a) twunsw.com.au;
  - (b) transportworkersunion.com.au;
  - (c) wayneforno.com.au; and
  - (d) tonysheldon.com.au.
11. The Respondent is therefore not subject to the domain name dispute resolution policy in relation to those domain names.
12. I have no jurisdiction to hear those complaints and therefore dismiss same.
13. The remaining application for consideration is that relating to twunsw.net.au ("the Domain Name").

### **Findings**

14. In order to be entitled to a transfer to it the Complainant must prove on the balance of probabilities that<sup>1</sup>:
  - (a) the Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
  - (b) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
  - (c) the Domain Name has been registered or subsequently used in bad faith. Further in relation to bad faith the following circumstances, in particular but without limitation, shall be evidence of the registration and use of a domain name in bad faith<sup>2</sup>:
    - (i) circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name;
    - (ii) the Respondent registered the domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name;
    - (iii) the Respondent registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
    - (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location.

### **The Complainant's name, trade mark or service mark and whether or not the Domain Name is identical or confusingly similar to same**

15. The Complainants submit that they are registered unions operating in the names of Transport Workers Union of NSW and the Transport Workers Union of Australia.

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<sup>1</sup> .au Dispute Resolution Policy (auDRP) (2008-01) Schedule A Clause 4(a).

<sup>2</sup> .au Dispute Resolution Policy (auDRP) (2008-01) Schedule A Clause 4(b).

16. There is no material in reply.
17. The domain name contains the characters "twu" and "nsw".
18. I find that the Domain Name is identical or confusingly similar to the First Complainant's name.

**The Respondent has no rights or legitimate interests in respect of the domain name**

19. The Domain Name is twunsw.net.au.
20. The Complainants submit the Respondent has no possible legitimate use for the Domain Name.
21. The Respondent has filed no material in reply.
22. I note the domain name contains "twu" co-joined to "nsw" and accept the Complainants' submissions and find that the Respondent has no rights or legitimate interests in respect of the Domain Name.

**The Domain Name has been registered or subsequently used in bad faith**

23. The Complainants submit, amongst other things, that the domain name has been used to prevent the First Complainant from registering the using the Domain Name and has otherwise been misused.
24. The Respondent has filed no material in reply.
25. There is no evidence that the domain name has been misused other than by registration and I reject all other submissions.
26. However, registration in order to prevent the owner of a name, trade mark or service mark from reflecting that name or mark in a corresponding domain name<sup>3</sup> is sufficient to constitute bad faith.
27. I accept the Complainants' submissions that the Domain Name has been registered in order to prevent the First Complainant from reflecting its name or trade mark or service mark in a corresponding domain name and hence used in bad faith.

**Orders**

28. In accordance with Clause 6.1(b) of the .au Dispute Resolution Policy (auDRP) (2008-01) I order that the domain name registration for twunsw.net.au be transferred to the First Complainant subject to the Registrar determining that the First Complainant is eligible to hold the domain name under the relevant policy rules.
29. I have no power to award costs or the other relief (apologies) sought by the Complainants and make no orders regarding same.

Steve White  
Sole Panellist

27 October 2009

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<sup>3</sup> [au Dispute Resolution Policy \(auDRP\) \(2008-01\)](#) Schedule A Clause 4(b)(ii).